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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

17 Vanguard Specialized Funds, et al.,  
18 Plaintiffs,  
19 v.  
20  
21 VEREIT, Incorporated, et al.,  
22 Defendants.

| No. CV-15-02157-PHX-JAS

## **JOINT SUMMARY OF DISCOVERY DISPUTE:**

**PLAINTIFFS' REQUEST FOR ARCP  
TO PRODUCE DOCUMENTS FOR  
GAVIN BRANDON**

**(REDACTED PUBLIC VERSION)**

24 Pursuant to the Court’s Rule 16(b) order (Dkt. 275), Plaintiffs and Defendants  
25 VEREIT, Inc., formerly known as American Realty Capital Properties, Inc., and VEREIT  
26 Operating Partnership, L.P., formerly known as ARC Properties Operating Partnership,  
27 L.P. (hereinafter “ ARCP”; together with Plaintiffs the “Parties”) jointly submit this brief

1 written summary of their discovery dispute. Per LR 7.2(j), the parties certify that they  
2 attempted to resolve this matter through personal consultation and sincere effort but were  
3 unable to resolve this matter.

4 **Plaintiffs' Statement.** Plaintiffs propose that ARCP collect and produce  
5 documents for ARCP's Chief Accounting Officer Gavin Brandon, going back to January  
6 1, 2013 and applying all searches. (Exs. 1, 3, 5.) These searches should yield documents  
7 responsive to Plaintiffs' requests (Exs. 8-10), but ARCP has only agreed to apply a more  
8 limited set of searches for a more limited time period (Exs. 2, 4, 7).

9 **First,** Mr. Brandon's documents are highly relevant. For example, [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 In its initial disclosures, ARCP identified Mr. Brandon as someone who should  
16 have relevant documents. (Ex. 11 at 4.) ARCP should not now withhold his documents,  
17 or otherwise limit production of Mr. Brandon's documents. Mr. Brandon was involved  
18 with the Cole merger in 2013 and throughout 2014, so ARCP's proposed limitations  
19 would exclude relevant and responsive documents (*see* Ex. 5 at 2-4).

20 **Second,** Plaintiffs suffered substantial losses, and it is not disproportionate for  
21 ARCP to include several additional custodians in this action – including Mr. Brandon –  
22 whose documents go to the central issues in this case.

23 **Third,** the depositions to date – reflecting many deponents' substantial lack of  
24 recollection of relevant issues – underscore that Plaintiffs need these documents so that  
25 they can effectively question Mr. Brandon during his deposition and at trial (where  
26 ARCP indicated it may have Mr. Brandon testify for ARCP at trial).

27  
28

1       **Fourth**, ARCP's objections are further undermined by the fact that ARCP's prior  
 2 representations regarding Mr. Brandon's documents were incorrect. (See Exs. 3, 5.)  
 3 ARCP's mischaracterizations provide no basis to withhold these documents.

4       **ARCP's Statement.** ARCP has offered to produce Mr. Brandon's documents  
 5 hitting on certain search terms for the period *after* October 28, 2014, which alone would  
 6 require it to review an additional 10,715 documents. Unsatisfied with this proposal,  
 7 Plaintiffs seek additional searches for Mr. Brandon for an earlier time period (and  
 8 including additional search terms) which would require ARCP to review at least **29,000**  
 9 **additional documents** (comprising more than **438,000 additional pages**).

10       Plaintiffs' claim for needing Mr. Brandon's documents is based on two misguided  
 11 premises: (1) that he was "involved" with the Cole merger in 2013/2014; and (2) that he  
 12 is "tied to a key admission" that ARCP engaged in intentional misconduct before 2014.

13       Mr. Brandon was an employee of Cole Capital before the Cole/ARCP merger,  
 14 which closed in February 2014. He was not involved in the merger negotiations and **was**  
 15 **not even aware of the merger** until it was publicly announced in October 2013. After the  
 16 merger, he continued to work on the legacy Cole businesses, working exclusively within  
 17 the Private Capital Management (PCM) segment sponsored by Cole Capital. The PCM  
 18 segment **was not the subject of any relevant changes in the March 2015 restatement,**  
 19 **and is not the subject of any allegations in the Complaint.** (Exs. 2, 4, 12-14.) Mr.  
 20 Brandon was appointed Chief Accounting Officer (CAO) on October 28, 2014, and was  
 21 not involved in the internal investigation leading up to the Company's October 29, 2014  
 22 public announcement of certain errors in its financials; accordingly, Mr. Brandon had no  
 23 role in making any purported admission in the October 2014 announcement concerning  
 24 intentional errors (which pertained to the second quarter of 2014 only and was based on  
 25 the internal investigation). He is listed in ARCP's initial disclosures only because he was  
 26 involved in the preparation of its March 2015 restatement (a process that started only  
 27 after Mr. Brandon became CAO).

1 ARCP has produced 15,401 documents on which Mr. Brandon was included.  
 2 Plaintiffs have not identified a single one contradicting ARCP's assertions regarding his  
 3 limited role prior to October 28, 2014. Notably, the document they cite for the "key  
 4 admission" is from **January 2015**. (Ex. 14 at 4-5.) Their request should be rejected.  
 5

6 Respectfully submitted this 25th day of May, 2018.

7  
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## **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 25, 2018, I electronically transmitted the attached  
3 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
4 Notice of Electronic Filing to all CM/ECF registrants.

s/ Sheri McAlister